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IN THE

Supreme Court of the United States

No. 715, October Term, 1940.

THE ARKANSAS CORPORATION COMMISSION, *et als.*,

Petitioners,

vs.

GUY A. THOMPSON, Trustee,

Respondent.

On *Certiorari* to United States Circuit Court of Appeals, Eighth Circuit.

BRIEF FOR THE STATE OF NEW JERSEY AS *AMICUS CURIAE.*

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Opinions Below and Jurisdiction.

The opinions below are set forth at page 8 of Petitioners' brief, and the basis of jurisdiction is stated at page 7 of the petition for writ of *certiorari.*

Statement of the Case.

For a complete statement of the case in the above entitled proceeding, the State of New Jersey relies upon petitioners' brief. This statement is confined to the aspects which affect its interest in the questions involved in the decision of the Eighth Circuit (116 Fed. (2d) 179), whose judgment is here for review.

That judgment was predicated upon a petition, filed by the Trustee of a railroad company in reorganization (under section 77 of the bankruptcy law) in the United States District Court, Eastern Division, Eastern Judicial District of Missouri, praying for a determination under section 64(a) *(11 U. S. C. A. Sec. 104 (a), p. 123)*, of the amount and legality of taxes for 1939, levied by the State of Arkansas and certain political subdivisions thereof upon the property of the Debtor after the petition was filed, and while said property was in the possession, control and operation of the Trustee appointed by said court *(R. 37)*.

Statement of Interest.

The particulars of the interest of the State of New Jersey in this case are here set forth.

It has filed claims for unpaid balances of taxes (aggregating $14,266,936.19 exclusive of interest) levied and accrued prior to the filing of petitions of the Debtor railroad companies in reorganization proceedings under Section 77 of the bankruptcy law. The names of the companies, dates of filing petitions, the amount of the tax claims, the tax years involved, dates of filing claims, and the courts, respectively, are set forth in Appendix "A" attached hereto.

In each of those cases issues have been joined on the proofs of claims, objections thereto and reply (or answer) to the objections.

It was not necessary to file these claims (*Johnson, Bankruptcy Reorganization* (1936) sec. 508, p. 442; *In re Kallak*, 147 Fed. 276), but they were filed in aid of reorganization plans; to inform the Interstate Commerce Commission, the Court, the Trustees and the parties interested, of the extent of the tax liens upon the property of the Debtors, respectively, which were necessary to be considered in such a plan. The status of the several tax claims is as follows:

Susquehanna Reorganization.

The petition was presented to, and the approval order was signed by, Honorable William Clark, District Judge. On June 25, 1938 he was appointed to the United States Circuit Court of Appeals, Third Circuit, but has since continued to exercise the jurisdiction of District Judge over this proceeding.

The controversy over this claim was submitted to the court for determination on a stipulated record, filed June 30, 1938, followed by briefs from both sides. No decision has yet been rendered.

On March 30, 1939 the Trustee filed a petition respecting the payment of taxes accruing before, and others accruing since, the filing of the reorganization petition, praying for instructions as to the course which he should pursue; whether he should prosecute appeals or other litigation to contest taxes levied since his appointment for the years 1938 and 1939; and what payments of taxes, if any, he should make out of funds in his hands. On the return of an order to show cause (April 5, 1939) the District Judge read, and issued, a "Memorandum", (a true copy of which is attached hereto as Appendix "B"), concluding with instructions—

> "In the meantime, the trustee will withhold payment of any taxes now claimed."

On December 11, 1940, the Trustee filed a petition for instructions as to whether he should join certain other railroad companies in a petition to the Circuit Court of Appeals, Third Circuit, for a rehearing on its judgment, entered November 27, 1940, (*Central R. R. Co.* v. *Martin*, 115 Fed. (2d) 968) sustaining the assessments and taxes levied against this Debtor, and others, for the years 1934, 1935 and 1936 (included in the proof of claim) or in any other proceedings connected with said appeals; what course, if any, he should take in connection with any suits, proceedings or litigation concerning said taxes involved for the years 1933 to 1937, both inclusive (involved in the proof of

claim) in any court or tribunal other than in the District Court in this reorganization proceeding.

On December 12, 1940, the District Judge entered an order (a true copy of which is attached hereto as Appendix "C") reciting that said court has jurisdiction to hear and determine the amount and legality of the taxes in question, and directing the Trustee not to join in said petition for rehearing, or in any other proceedings connected with said appeals. Accompanying said order, the District Judge issued a "tentative" opinion in which he says that "the State's original claim has been held suspended and awaiting events." *In re New York, S. & W. R. Co.*, 36 Fed. Supp. 158, 161.

Erie - New Jersey & New York Reorganizations.

No hearings have been called on the State's claims in these proceedings, because (as stated by Counsel for the Trustees to the State's representatives) of pending litigation of these taxes in the civil courts and the pending litigation of the same questions in other jurisdictions, particularly in the above entitled cause (*Arkansas Corporation Commission* v. *Thompson*, 116 Fed. (2d) 179) in the Eighth Circuit and on review in this court.

Central of N. J. Reorganization.

The petition was presented to, and the approval order was signed by, Honorable Guy L. Fake, District Judge. No hearings have been called on the State's claim for taxes.

On January 7, 1941, the Trustees filed a petition reciting the intention of certain other railroad companies to file the

above mentioned petition for rehearing in the United States Circuit Court of Appeals, Third Circuit, and if unsuccessful therein, to apply to this Court for writ of *certiorari* to review that court's judgments entered November 27, 1940; the above mentioned decision of the Eighth Circuit involving the same issues as are involved in the State tax claims; and the intended application to this Court for writ of *certiorari* to review the same, and praying for "direction, instructions and protection" as to whether they should join in the proposed petition for rehearing.

On said January 7, 1941, the district judge entered an order (a true copy is attached hereto as Appendix "D") instructing the Trustees not to join in the proposed petition for rehearing or to participate in any reargument, if granted, and reserving for future consideration any and all other questions arising or which may arise in connection with the rights and duties of the Trustees and the Debtor in respect to taxes assessed against Debtor's property for 1934, 1935 and 1936. At that time, the District Judge and counsel for the Trustees discussed the litigation of the Arkansas taxes in the Eighth Circuit as involving the same, or some of the same, issues as are involved in the tax claims filed by the State of New Jersey.

On January 8, 1941, the Trustees filed a petition reciting notice of the primary assessment of Debtors property for the year 1941; the statutory provision for review thereof on complaint before the State Tax Commissioner; that resort to the administrative remedies available to said Trustee to review the assessments and taxes for 1941 would result in a duplication of proceedings, expense and effort and would unduly delay, interfere with and burden the

prompt reorganization of the Debtor, and praying for "direction, instruction and protection" as to whether a complaint should be filed with the State Tax Commissioner to review said primary assessment.

On January 8, 1941, the District Judge entered an order (a true copy of which is attached hereto as Appendix "E") instructing the Trustee not to file with the State Tax Commissioner a complaint against the primary assessment for the year 1941, and reserving for future consideration any and all questions arising or which may arise in connection with the rights and duties of the Trustees and of the Debtor in respect to the taxes which may be assessed against the Debtor's property for that year.

On January 29, 1941 the Trustees filed a petition reciting the assessment and taxes of the Debtor's property for the year 1939; that the Debtor had appealed therefrom to the State Board of Tax Appeals on which hearings had been held; that said hearings were at the stage at which Debtor was entitled to introduce its rebuttal testimony; that prior to the qualification of the Trustees the Debtor had applied for instructions as to whether it should prosecute its appeal of the 1939 assessment and taxes to the State Board of Tax Appeals and whether pending determination the Debtor should pay part of the taxes levied for that year; that the court had, on December 13, 1939, instructed the Debtor to pay 60% of the tax bill for that year; that the Debtor had paid that percentage of the taxes accordingly; that the State of New Jersey had filed a tax claim in the Central reorganization proceeding for unpaid balances of taxes for the years 1932 to 1939 both inclusive; that the Trustees intended to file objections to

that claim and to bring it before the court for hearing and determination as to amount and legality of the taxes levied for each of said years; that the Trustees were uncertain as to whether the Debtor should pursue its appeal before the State Board of Tax Appeals for the purpose of obtaining an early determination therein, and praying for instructions as to the course they should pursue with respect to the further prosecution of the Debtor's appeals on taxes levied for the year 1939.

On January 31, 1941 the District Judge entered an order (a true copy of which is attached as Appendix "F") reciting that doubt exists as to whether the Debtor should proceed with said tax appeal in view of the fact that the State of New Jersey had filed a tax claim including taxes for that year, "where it may be found that this court has and should exercise exclusive jurisdiction under Section 64(a) and other provisions of the bankruptcy act"; that questions thus raised present intricacies and cannot be answered before Monday next, (February 3, 1941), since it requires a careful study of the statutory and case law on the subject and a submission of briefs to the court. The court directed that "pending such study and filing of briefs the Debtor should appear before the State Board of Tax Appeals and make known the intricacies with which this court, at short notice, is confronted as to the law on the subject, and respectfully request an adjournment for two weeks within which time the question presented may be studied and answered."

On February 13, 1941, the District Judge entered an order (a true copy of which is attached hereto as Appendix "G") instructing the trustees to continue to prosecute the Debtor's appeals from taxes from 1939 to a final determina-

tion before the State Board of Tax Appeals and ordering "that if any question arises as to the amount or legality of any tax assessed against the Debtor, or as to any tax claim heretofore or hereafter filed against the Debtor's estate or against the Trustees of the property of the Debtor, such questions shall be heard and determined by this court."

The Issues in the Arkansas Case.

The questions of law in direct issue before the court below touching the interests of the State of New Jersey, as contended by petitioners, are that:

1. Section 64(a) has no application in a reorganization proceeding under section 77 of the bankruptcy law.

2. Section 64(a) is applicable only to taxes which have accrued against the Debtor prior to the filing of its petition for reorganization under section 77 *(R. 38)*.

Other issues of law incidentally involved are that:

3. The District Court lacked jurisdiction to hear and determine the amount or legality of said taxes until after the Trustee had exhausted the administrative, and other, remedies for review thereof provided by state law.

4. If the court possessed such jurisdiction it should have withheld its exercise thereof until the Trustee had exhausted the administrative, and other, remedies provided by state law, and until the amount and legality thereof had been thus established according to the constitution and laws of the state.

Each of the four issues were decided by the court below adversely to the form above stated.

Common Issues.

Since the claims filed by the State of New Jersey are for taxes accruing against the Debtors prior to the filing of their petitions for reorganization, issue number 1 is the only one of those above named which is directly involved in said claims. However said claims also involve other issues (which will be referred to as numbers 5 and 6) namely:

5. If the District Court has jurisdiction under section 64(a) to hear and determine the amount and legality of said taxes, it has no jurisdiction, power or authority to make a new assessment or tax levy, or to revise or reduce the amount of assessments or taxes lawfully made or levied according to the constitution and laws of the State of New Jersey, or to abate or reduce the amount of interest thereon, or to change the interest rate, prescribed by the railroad tax act of the State of New Jersey.

6. All of the grounds of objection stated, and all of the issues of fact and law raised, or necessarily involved, in the objections to said claims, respectively, with respect to the amount and legality of said assessments and taxes are *res judicata* in the proceedings on the New Jersey tax claims, respectively.

The State of New Jersey does not subscribe to petitioner's contention as stated in issue number 2, because it stands on issue number 1, and contends that section 64(a) has no application to taxes levied and accrued either before or after the reorganization petition is filed.

Issues numbered 3 and 4 are not involved in the tax claims of New Jersey as filed, because the Debtors, or the

Trustees, have exhausted the remedies prescribed by law to review their assessments and taxes each year from 1932 to 1936, both inclusive, and have, to date, pursued the remedies prescribed by law to review their assessments and taxes for each of the years 1937, 1938 and 1939.

However, issues 3 and 4 are important to the State of New Jersey because of the orders above mentioned (and attached hereto as appendices) instructing the Trustees of some of the Debtors not to pay any part of the taxes levied and accrued since the petitions for reorganization were filed, and one of those orders instructed the Trustee not to pursue, or exhaust, the remedies prescribed by law to review, or contest, assessments or taxes for the year 1941.

Reasons for This Brief.

The reasons for filing this brief *amicus curiæ* are—

(a) Several of the issues in the above entitled case are the same as those involved in the contest of the tax claims filed by the State of New Jersey, as listed in Appendix "A" attached hereto.

(b) The replies (or answers) of the State of New Jersey to the Trustees' objections to the tax claims in each of the reorganization proceedings listed on Appendix "A", contained the following, or similar words:

> "This court has no jurisdiction, power or authority to make a new assessment or tax levy, or to revise or reduce the amount of the assessments or taxes, or any of them, or to abate or reduce the amount of the legal interest which has accrued, or which may hereafter accrue, to date of final payment,

upon the amount of taxes in default on any due date, as prescribed by the railroad tax acts of the State of New Jersey."

Since this contention was argued and briefed nearly three years ago in the Susquehanna case, the District Judge has twice ascribed the delay of decision to uncertainties, and has stated that he was "awaiting events" *(App. "B", infra, pp. 41-42; App. "C", infra, pp. 43-44); In re New York, S. & W. R. Co.*, 36 Fed. Supp. 158, 161, 162). It has not been argued or briefed in the other cases, but one of the orders of the District Judge in the Central Railroad case refers to "doubt" and "intricacies" that require "careful study of the statutory and case law on the subject and the submission of briefs to the Court" *(App. "F", infra, pp. 48-49)*. In both the Erie and the Central Railroad cases express reference has been made to the above entitled (Arkansas) case as a reason for delaying action on those claims (*Supra, pp. 5 and 6)*.

(c) This is the first case in which this Court has taken jurisdiction to hear and determine the issue of the application of, and jurisdiction of the District Courts under, section 64(a) in railroad reorganization proceedings under section 77, and its decision in the above entitled (Arkansas) case will have an important influence upon the decision of this issue (and cognate issues) in the proceedings respecting the tax claims of the State of New Jersey.

(d) While the State of New Jersey is mindful of the rule which prevents this Court from deciding any issues outside of those raised, or involved, in the petition for *certiorari*, or arising *sua sponte* in the consideration of, the

above entitled cause, it deems it important that the Court be informed of the ramifications of, and of the widespread public interest in, the questions here involved as they confront other state governments through the disruption of the orderly processes of tax review and collection, and the hardships which fall upon state governments, institutions and citizens, as a result of duplications of state and federal jurisdictions, and protracted delays in the collection of large amounts of necessary public revenue upon which their proper functioning depends.

ARGUMENT.

1.

Section 64(a) of the Bankruptcy Law has no application in a reorganization proceeding under section 77 of that law.

Jurisdiction of the District Court was assumed under the following *proviso* of section 64(a) *(11 U. S. C. A., Sec. 104, Cum. An. Pocket Part, 1940, p. 18)*:

> "That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court";

Purpose.

The purpose of section 64 was to have tax claims ascertained and determined before the first dividends are declared, *In re Stavin*, 12 Fed. (2d) 471. It was stated as follows in a decision of the First Circuit (November 27, 1940) in *Cohen* v. *United States*, 115 Fed. (2d) 505, 507.

"In ordinary tax collection proceedings, the taxpayer pays under protest the tax assessed and files a claim for refund. Frequently there is a delay of several months before the Commissioner acts on the claim, and it is only after its disallowance that suit for recovery is brought. All of this points to delay in determining finally the validity of the tax. It is the intention of the Bankruptcy Act that estates be closed promptly. If the trustee should pay the tax under protest, file a claim for refund and sue to recover, then the bankruptcy proceedings would not be closed for a long time and the very purpose of the act would be defeated. In re Sheinman, *supra* (14 Fed. (2d) 323); In re Universal Rubber Products Co., D. C. W. D. Pa. 1928, 25 F. 2d 168, affirmed 3 Cir., 1928, 28 F. 2d 253; In re W. P. Williams Oil Corporation, *supra* (265 Fed. 401); In re General Film Corporation, *supra* (274 Fed. 903); In re Clayton Magazines, Inc., *supra*" (77 Fed. (2d) 852).

The cases above cited were all decided prior to the enactment of section 77.

In neither Arkansas nor New Jersey is the taxpayer required to pay his taxes in advance of final judicial determination of their amount or legality.

Its purpose was to enable the court to wind up the affairs of the bankrupt and distribute his estate as promptly and as inexpensively as possible. Apparently, only unadjudicated tax claims were under consideration.

There is no such urgency in a railroad reorganization proceeding under section 77, which contemplates the preservation of the property, to be turned over intact, as a going concern, to the same, or a reorganized, company. Experi-

ence indicates that there is ample time in such cases to secure an adjudication of tax claims in the procedure provided by state laws. In all of New Jersey cases such procedure has heretofore been continued, or followed, by the Trustees during the pendency of the reorganization proceedings.

Scope.

The *proviso* above quoted follows, and is necessarily limited to, the scope of paragraph (a) of that section. It was first enacted in 1898 *(30 Stat. 563, c. 541)* as part of the bankruptcy law, and subsequently amended at various times down to its enactment of its present form in 1938 *(52 Stat. 874, c. 575)*.

Prior to the enactment of the present section 77, chapter 8, of the bankruptcy law, on March 3, 1933 *(11 U. S. C. A., sec 205, p. 84)*, there was no provision in the bankruptcy laws relating to railroads, or for the reorganization of railroads in the bankruptcy courts. That section conferred an *additional* jurisdiction upon the District Courts.

Such proceedings were not within the contemplation of Congress when it enacted section 64(a) or any of its amendments prior to that of 1938, and that amendment contains nothing to indicate an intention that the application of the section should be *extended* to proceedings under section 77. If such an intention existed it could have been expressed in a few words. An "immunity from local laws will not be read into the Bankruptcy Act" *Boteler* v. *Ingels*, 308 U. S. 57, 61.

The following portions of section 64(a), totally inapplicable to, and inconsistent with, section 77 proceedings,

demonstrate that it was intended to apply only to liquidation cases.

(1) Debts are prior to "the payments of dividends to creditors."

(2) Involuntary cases are included.

(3) "Cost and expense" is to be allowed to "creditors" for their recovery, "for the benefit of the estate of the bankrupt", of "property of the bankrupt" "transferred or concealed by him either before or after the filing of the petition".

(4) The trustee is to be allowed the "cost and expenses" incurred "in opposing the bankrupt's discharge".

(5) References throughout are to the "bankrupt". Railroads in reorganization proceedings under section 77 are not bankrupts; they are referred to as "debtors". Their petitions do not allege insolvency, but only, as the statute permits, that the debtor is without funds to pay and discharge the obligations that are then due, or as they mature, and that they have no means of borrowing or procuring sufficient funds to pay or discharge the same. The orders approving the petitions do not adjudge them bankrupt, or insolvent. In fact, if the plan of reorganization fails for any reason the court's jurisdiction under section 77 ends; the whole proceeding is dismissed and title to the estate reverts to the debtor. This was pointed out by this Court in *Lowden* v. *Northwestern Nat. Bank & T. Co.*, 298 U. S. 160, 164, where the court also said (at page 163) that—

> "A proceeding to reorganize is not a bankruptcy, although an amendment to the bankruptcy act creates and regulates the remedy."

That case involved a railroad reorganization proceeding under section 77.

The main function of section 64 is to fix the priority status of claims in liquidation cases in which the liabilities exceed the assets. Since taxes are invariably statutory prior liens upon the property and franchises of railroad companies, it is unnecessary to establish their priority, and the full powers of the court under section 77, are broader than under the bankruptcy act (*Lowden* v. *Northwestern Nat. Bk. & Tr. Co.*, 298 U. S. 160, 164), and sufficient for all purposes of fixing priorities among statutory lienors, and among secured and unsecured creditors, and for apportioning the securities, or cash, of the reorganized company according to their equities. Since no liquidation is contemplated, no occasion arises for an apportionment of the proceeds of a sale of assets, among the different claimants, security owners or creditors.

While paragraph (l) section 205 U. S. C. A. (sec. 77) confers upon the court the same jurisdiction and powers "as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the Debtor's petition was filed", but they may be exercised *only* insofar as such jurisdiction and powers are "consistent with the provisions thereof".

A decree adjudicating a petitioner bankrupt and directing a liquidation of the company is impossible under section 77. Other sections of the general bankruptcy laws, like section 96, are explicitly included by section 77.

Paragraph (o) of section 77B *(11 U. S. C. A. sec. 207)* is identical with paragraph (l) of section 77, but in addi-

tion thereto, section 77B *(Pgf. k)* provides that if the reorganization plan fails the court may order liquidation, in which event, only, "debts shall be entitled to priority as provided in section 104 (sec. 64, U. S. Code) of this title" *(11 U. S. C. A. sec. 207)*.

The express inclusion of the provisions of section 64 in section 77B for use in case of liquidation, only, and their omission from section 77, under which no liquidation is possible, is significant and implies a clear intent of Congress that section 64 was intended, as its text indicates, to apply only to the distribution of assets in liquidation cases. Liquidation was provided for in section 77B, but is hostile to the purposes of section 77. This principle is supported by Judge Wilkerson, concurring in the conclusions of Judge Pray, *In re Chicago, M. St. P. & Pacific R. Co.*, 27 Fed. Supp. 685, decided May 3, 1939.

In *City of Springfield* v. *Hotel Charles Co.*, 84 Fed. (2d) 589, the First Circuit, in a section 77B proceedings, held that section 64(a) had no application to tax claims unless and until there was an order of liquidation. The same holding appears *In re A. V. Manning's Sons*, 16 Fed. Supp. 932; *In re New York O. & W. Ry. Co.*, 25 Fed. Supp. 709, 713, and *Texas Co.* v. *Blue Way Lines, Inc.*, 93 Fed. (2d) 593.

Numerous decisions deal with the similarity of Sections 77 and 77B of the Bankruptcy Act, and the structure of the Act itself implies, *(In re New York, O. & W. R. Co.*, 709, 712-713), that the two sections are analogous; one extending the relief and remedy of reorganization to railroad corporations (section 77), and the other to non-railroad

corporations. So long, therefore, as reorganization proceedings obtain under the two sections, like rules of applicable law and procedure should be employed in implementing the policy of Congress as set forth in the Bankruptcy Act.

When a Section 77B proceeding is converted into a liquidation proceeding, the special provisions applicable to the latter proceeding apply and such proceeding becomes fundamentally different from that of a corporate reorganization. In fact, it becomes a straight bankruptcy case.

Liquidation requires the winding up of an estate, the cessation of corporate existence and the distribution of net assets, if any, over and above its liabilities. Reorganization, on the other hand, contemplates the continued existence of the corporation and the preservation of the corporate existence and property. After the overhauling, the same, or a new, corporation carries on. If a plan for reorganization fails of approval, the estate is returned to the debtor in its old form. *In re Chicago, M., St. P. & Pac. R. Co.*, 27 Fed. Supp. 685, 686-7; *In re New York, O. & W. Ry. Co.*, 25 Fed. Supp. 709, 712-713. "By that time there may even be ability to pay dividends as they mature. What is done at the beginning amounts to little more than a provisional sequestration to give protection for the future," *Lowden v. Northwestern Nat. Bank & T. Co.*, 298 U. S. 160, 164.

Paragraph 1 of Section 77 is *not consistent* with the provisions of a reorganization proceedings, since reorganization alone is possible under Section 77. There is no provision here, as there is under Section 77B, for converting the reorganization proceedings into one in liquidation;

hence there is no need for applying Section 64(a) as there is if a Section 77B proceeding goes into liquidation under paragraph (k) (5) thereof.

Another reason why section 64 does not apply in a section 77 proceeding is that section 77(b) carries its own exclusive and comprehensive provision (inconsistent with section 64) respecting creditors and claims, and section 96 is the only part of the bankruptcy law that is called to its assistance in dealing with those subjects. Upon this hypothesis it was held *(In re Chicago, M., St. P. & Pac. R. Co.,* 27 Fed. Supp. 685, 687-8) that section 57j of the bankruptcy act did not apply in a section 77 proceeding. That decision held that paragraph (l) could not be construed to override paragraph (b), of section 77.

The court, *In re New York, O. & W. Ry. Co.,* 25 F. Supp. 709, while recognizing the analogy between section 77 and the reorganization part of section 77B *(pp. 712-13),* fell into error in holding that section 64(a) was applicable to a section 77 proceedings in reorganization, while at the same time holding that it did not apply under 77B proceeding while it remained a reorganization proceeding.

It is manifest from the decisions in *Texas Co.* v. *Blue Way Lines, Inc.,* 93 F. 2d 593 (1937), *City of Springfield* v. *Hotel Charles Co.,* 84 F. 2d 589 and *In re A. V. Manning's Sons,* 16 F. Supp. 932, that so long as a proceedings under 77B remains a reorganization proceeding (77 is always a reorganization proceeding) Section 64(a) does not apply, since the same is consistent only with liquidation and not with reorganization.

Tendencies.

Without questioning the power of the District Court to do the things needful to accomplish, within the scope of section 77, the effective reorganization of railroad companies in the interest of efficient transportation service, it is respectfully submitted that there is a tendency to assume, and exercise, a jurisdiction beyond the bounds of necessity should be discouraged. A misconception of the meaning of the words "summary" and "plenary" have been used as justification for the exercise of wide powers. Those terms are borrowed from the English admiralty and ecclesiastical courts. "Plenary" means "full and formal" proceedings, and "summary" applies to proceedings which are more "succinct and less formal," *2 Chitty Pr. 481.* They are terms of procedure and not of power.

The exercise of the extraordinary powers conferred by section 77 is limited to the powers conferred. It gives no *carte blanche* upon which the court may fill in an unlimited specification of power. It does not leave matters decided by other courts of competent jurisdiction open to readjudication in a section 77 proceeding, just because "different judicial minds have different judicial methods of approach" *(App. "B", infra, pp. 41-42).*

The State of New Jersey contends that the provisions of section 77 does not, and should not be interpreted to, require unnecessary conflict and interference with the orderly procedure under state laws respecting such delicate matters of state concern as the assessment and collection of its public revenues. See *Boteler* v. *Ingels,* 308 U. S. 57, 61, as quoted under point 2.

There is no warrant in section 77, or any other applicable provision of the bankruptcy law, for permitting a railroad company to "escape through a petition for reorganization" taxes "which it will be obliged to pay if the reorganization fails and the suit is dismissed", *In re Chicago, M., St. P. & Pac. R. Co.*, 27 Fed. Supp. 685, 688 (headnote 5).

The Bankruptcy Court is not a sanctuary for delinquent taxpayers. If a prayer (in a reorganization petition) offered on its altar can stop, or deplete, the public revenues, it would be profitable for railroad companies to permit large arrearages of unpaid taxes to accumulate, under the protection of laws (such as those in Arkansas and New Jersey) which permit the payment of such amounts as the taxpayer admits to be due, or as a court may order during a contest of the taxes, and the withholding of the remainder until its validity has been contested through, and been sustained by, all of the courts in the land, and then claim sanctuary in the District Court under a section 77 proceeding.

If the District Court, in such a proceeding, has power to *rehear* and *redetermine* the amount and legality of the tax, and revise or reduce the amount, and to abate or reduce the accrued interest, the exercise of that power would serve only to enrich the debtor's estate, and its security holders and creditors, at the expense of the State and municipal governments and their citizens. The balance of equities is in favor of the public. The public interest in efficient transportation does not require that sacrifice of the states, who are the natal source of corporate existence.

In the Central railroad case, which is illustrative of all the others involved in the New Jersey tax claims, its taxes for the years 1931 to 1939, both inclusive, have been reviewed and contested on all of the issues presented in the Trustees' objections in litigations before the State Tax Commissioner, the State Board of Tax Appeals, the New Jersey Supreme Court, the New Jersey Court of Errors and Appeals, the United States District Court, District of New Jersey, United States Circuit Court of Appeals, Third Circuit, and *certiorari* has twice been denied by this court, *Central R. Co.* v. *State Tax Commissioner*, 293 U. S. 568; *Lehigh Valley R. Co.* v. *Martin*, 306 U. S. 651; rehearing denied 306 U. S. 669-670, 1063-4. Petition for *certiorari* was filed March 26, 1941 and is now pending in this Court in the 1934, 1935 and 1936 tax cases. *(Central R. Co.* v. *Martin*, Nos. 873-890, Oct. Term 1940).

Notwithstanding this litigation over the past decade, in which the assessments and taxes in question have been sustained throughout, the Trustees have submitted, and the District Judge has reserved the right, and announced his intention to try those issues *de novo*, respecting, the same taxes (except 1931), between the same parties and upon the same issues *(App. "E", infra, pp. 47-48; App. "G", infra, pp. 50-51)*, under section 64(a) of the bankruptcy law, and on March 31, 1941, he entered an order of reference for that purpose. Hence, the State's claim that those issues are *res judicata* in the reorganization proceedings in the District Court. However, the issue of *res judicata* is not pertinent to, and is not argued, in this brief.

The conflict of decision in the District and Circuit Courts on this point have never been reconciled by a decision of this court.

Involved in the question whether section 64(a) is applicable to confer jurisdiction of the District Court in a section 77 proceeding to determine all questions affecting the amount and legality of taxes which have been levied by authority of, and in accordance with, state laws, is the question whether that court has power to make a new assessment, according to its own notion of property and franchise values, or to revise or reduce tax levies whose amount and validity have been adjudicated, and sustained, by state and federal courts of competent jurisdiction, and to abate, or reduce, interest, on taxes in default, computed at the rate prescribed as legal interest (and not as penalties) by the state laws.

The amount and legality of the taxes claimed for the years 1932 to 1939, both inclusive, having been judicially determined and sustained against all of the companies listed in Appendix "A", the State of New Jersey contends that they are not open to redetermination, in a hearing *de novo* in reorganization proceedings under section 77, and that section 64(a) does not confer upon the District Court the power to do so.

There are decisions on both sides of this question in straight bankruptcy cases, and a few in section 77 cases, but the only case in which it has been contended that sections of the bankruptcy act, not expressly mentioned in section 77, did not apply in section 77 proceedings is the above mentioned case of *In re Chicago, M. St. P. & Pac. R. Co.*, 27 Fed. Supp. 685 in which Judges Wilkerson and Pray held that section 57 (j) of the bankruptcy act *(11 U. S. C. A., sec. 93(j))* did not apply in section 77 proceedings because it was not explicitly included in that section, and therefore

could not be implicitly included. While that was a District Court decision, the opinion was well considered and written by an experienced and able judge.

The most thorough consideration of the powers of the District Courts under 64(a) appears in Judge Geiger's opinion *In Re Gould Mfg. Co.*, 11 Fed. Supp. 644, which was reviewed in *45 Yale Law Journal*, at page 754; "Power of Bankruptcy Court to Revise Tax Claims". That decision holds that tax claims are incontestable in the bankruptcy court "except when challenged for illegality because of want of power to levy, or in respect to a failure to pursue indispensable steps of procedure in their assessment and levy." It is reducible to two questions:

(a) Is the exaction a "tax"?

(b) Was it levied in accordance with constitution and laws of the sovereignty imposing it?

An exaction levied upon a person or corporation for the support of the government, measured by a valuation of property within the sovereign jurisdiction is undoubtedly a "tax". The second question is answered if the taxes have been fully adjudicated and sustained by courts of competent jurisdiction.

The cases *pro* and *con* were reviewed by Judge Evans (as acting District Judge) *In re 168 Adams Bldg. Corporation*, 27 Fed. Supp. 247 (March 14, 1939), in an opinion which accepts and follows the reasoning and conclusions of Judge Geiger in the *Gould* case. The Circuit Court of Appeals, Seventh Circuit, affirmed (105 Fed. (2d) 704) and this Court denied *certiorari* in *Steinbrecher* v. *Toman*, 308 U. S. 623.

The decision in the *Gould* case was accepted and followed *In re Schach,* 17 Fed. Supp. 437, 439, which expressly disapproved of the decision in *Henderson County* v. *Wilkins,* 43 Fed. (2d) 670, and the *Henderson County* case has not been followed in any subsequent case.

The doctrine in the *Gould* case was accepted and followed in *Johnson, Bankruptcy Reorganization* (1936), Sec. 508, p. 442, and *Gerdes, Corporate Reorganizations,* Vol. 1, 1937 Cum. Supp. sec. 400.

An extended quotation appears, at page 25 of the brief for petitioners, from Finletter, *The Law of Bankruptcy Reorganizations* (1939) pp. 343-4, to the effect that section 64 is not applicable in a section 77 proceedings.

In re Lang Body Co. (Boyle v. *Hipp),* 92 Fed. (2d) 338, the court assumed jurisdiction under 64(a) to hear and determine the question of "whether the assessments were so unreasonably excessive as to be illegal" *(p. 340),* relying chiefly upon the authority of *Great Northern Ry. Co.* v. *Weeks,* 297 U. S. 135, which has since been overruled in *Nashville C. & St. L. Ry.* v. *Browning,* 310 U. S. 362, 371.

The discussion of the *extent* of jurisdiction is not further pursued because the Court may not deem it important in this case to decide that question, but it may have some influence upon the basic question directly involved in this record; namely, whether that court has *any* jurisdiction under section 64(a) to hear and determine the amount and validity of taxes involved in a section 77 proceeding. It is respectfully submitted that section 64 of the bankruptcy law was not necessary to, or incorporated, either explicity or implicity, in section 77, and that the District

Court has no jurisdiction under section 64(a) in a reorganization proceeding under section 77.

If there is otherwise no such jurisdiction, it cannot be conferred by the mere filing of tax claims.

2.

Section 64(a) has no application to taxes levied upon the Debtor's property after the filing of a petition for reorganization under section 77.

The implication of issue number 2 as above stated (p. 9) is that section 64(a) may apply to taxes levied before, but does not apply to taxes levied after, the filing of a petition for reorganization. If the contentions of point 1 are correct, they dispose of this point also. The *Arkansas* case involves no taxes levied before, but only those levied *after,* the petition for reorganization was filed. The court below held that it applied alike to taxes levied after, and before, the petition was filed.

However, that is a *negative* decision. The court says:

> "* * * we discern no reason to hold that the words 'any taxes' should be restricted as contended for", (taxes levied before the petition was filed) *(R. 40).*

In Hennepin County, Minn., v. M. W. Savage Factories, 83 Fed. (2d) 453, *that* court held that section 64(a) "does not touch the payment of taxes accruing during the trustee's possession". The conclusion of the court, after a very extensive discussion and review of numerous decisions

(under headnotes 1-2, 4, 5 & 6), is condensed in the following paragraph (p. 456):

> "That seems to be a reasonable and sensible interpretation, since such taxes are not in a true sense taxes 'due and owing by the bankrupt', but are ordinary carrying charges of property taken over and used by the trustees under order of the court in the conduct of their own operations and for the benefit of general creditors."

This court denied *certiorari* in that case, *299 U. S. 555.*

The *Hennepin County* case began as a section 77B proceedings, but at the time of that decision it had been converted into a liquidation case. If section 64(a) does not apply to taxes accruing during the trustee's possession in a straight bankruptcy (liquidation) case, *a fortiori* it cannot apply in a section 77 case where no liquidation is possible.

There are a number of decisions holding that section 64(a) applies equally to taxes levied before, and after, the filing of the petition, *In re Preble Corp.*, 15 Fed. Supp. 775, affirmed on other grounds, 84 Fed. (2d) 73; Cert. denied, *299 U. S. 575; In re Fuoco,* 22 Fed. Supp. 808.

Such holdings are inconsistent with section 124(a) *(U. S. C. A. Title 28)* and with numerous decisions holding that the trustee (and not the debtor) is liable for taxes accruing during his administration of the estate as current expenses incident to the administration of the estate and if the trustee neglects to pay them he may be surcharged therefor, and for any interest or penalties resulting from that neglect. *In re Humeston,* 83 Fed. (2d) 187; *Thompson* v. *State of Arkansas,* 98 Fed. (2d) 112; *Thompson* v. *State*

of Louisiana, 98 Fed. (2d) 108; *Florida National Bank* v. *United States*, 87 Fed. (2d) 896; *J. P. Morgan & Co.* v. *Missouri Pac. R. Co.*, 85 Fed. (2d) 351, *Cert. denied*, 299 U. S. 604; *3 Gerdes, Corporate Reorganizations*, Sec. 1181, pages 1884-6 (citing numerous cases); *Johnson, Bankruptcy Reorganization* (1936) Sec. 507, page 439, sec. 508, pages 439-440 (citing cases); *Moore's Bankruptcy Manual* (1939), *Corporate Reorganization*, Sec. 64.05, page 190, page 357, note 25, page 795, Annotation (citing many cases).

In re Pressed Steel Car Co., 100 F. (2d) 147, the Third Circuit made a distinction between franchise taxes accruing prior to, and those accruing during, a reorganization proceedings under section 77B. It held that section 64(a) did not apply to such a reorganization proceedings unless and until there was a decree of liquidation *(p. 152)*. It held that taxes accruing during the proceeding were payable by the trustee as operating expenses incident to, and necessary for, the preservation of the franchise of the debtor, which it was the trustee's duty to protect and preserve as a part of the property of the debtor *(p. 151)*.

By its explicit terms, section 64(a) is restricted to "(4) taxes legally due and owing by the bankrupt to the United States or any state or any subdivision thereof"; and the proviso for hearing and determining questions as to the amount and legality of any taxes, is directly attached, and limited, to that subdivision (4) of the section. There is no justification for extending the operation of that subdivision to taxes accruing after the debtor has surrenderd the possession and control of the property taxes into the hands of a trustee, whose duty respecting such taxes is governed by 28 U. S. C. A. sec. 124a.

We deem the decision of this Court in *Boteler* v. *Ingels*, 308 U. S. 57, 59, (rehearing denied, 308 U. S. 637) as conclusive on this point. That case involved a motor vehicle license tax, and penalties, imposed by the State of California during the trustee's conduct of the business of a debtor in a section 77B proceedings *(p. 60)*. This Court held that "neither the tax liability nor the penalties incurred by the trustee after bankruptcy are governed by this section or its subdivisions" (sec. 57, relating to the filing of claims). It then considered the Act of June 18, 1934, providing that a trustee conducting a business "shall be subject to all State and local taxes applicable to such business the same as if such business were conducted by an individual or corporation * * *" *(p. 60)*. With reference to the question whether, in the absence of that act, the operation of a local business by a trustee "makes the business immune from State laws and valid measures for their enforcement", the Court said:

> "* * * Clearly, means of permitting such immunity from local laws will not be read into the Bankruptcy Act. At any rate, Congress has here with vigor and clarity declared that a trustee and other court appointees who operate businesses must do so subject to State taxes 'the same as if the business(es) were conducted by an individual or corporation' * * *. However, petitioner's (the trustee's) contention would exempt a trustee operating a business in bankruptcy from this double tax liability which other delinquents must bear. A State would thus be accorded the theoretical privilege of taxing businesses operated by trustees in bankruptcy on an equal footing with all other businesses, but would be denied the traditional and almost uni-

versal method of enforcing prompt payment."

"* * * The Act of 1934 indicates a congressional purpose to facilitate—not to obstruct—enforcement of State laws; the court below correctly recognized and applied this congressional purpose and its judgment is affirmed" *(p. 61)*.

Thus, the court required the trustee to pay the taxes and penalties imposed by the laws of California upon the business conducted by him.

By the same reasoning, the respondent in the instant case was subject to the laws of the State of Arkansas respecting the payment, or contest, of taxes imposed upon the debtor's estate while in his possession and operation, and the District Court had no jurisdiction to usurp the powers of the state tribunals and by-pass the statutory reviewing processes by adjudicating the amount and legality of those taxes under section 64(a), of the bankruptcy laws, or otherwise; at least, until the state reviewing tribunals had adjudicated the objections of the trustees thereto. There is no more reason for reading section 64(a) into the present situation under section 77 than there was for reading section 57 into the situation, under section 77B, presented in the *Boteler* case *(p. 61)*.

3.

The District Court lacked jurisdiction to hear and determine the amount or legality of said taxes until after the Trustee had exhausted the administrative, and other, remedies for review thereof provided by law.

This contention is supported by *City of Springfield* v. *Hotel Charles Co.*, 84 Fed. (2d) 589, 591, and *In re A. V. Manning's Sons*, 16 Fed. Supp. 932, 933, it is also supported, in principle, by the decisions in *Nashville C. & St. L. Ry.* v. *Browning*, 310 U. S. 362; *Railroad Commission* v. *Rowan & Nichols Oil Co.*, 310 U. S. 573, 580-1, 584; and *Railroad Commission* v. *Rowan & Nichols Oil Co.*, 85 L. ed. Adv. Op. 321, 323.

In Arkansas, as in New Jersey, the statute prescribes certain exclusive proceedings for the review of assessments and taxes. The state has a right to limit review of taxes to its prescribed remedies and the necessity of pursuing those remedies does not deny the taxpayer due process of law or any other right. *Burrill* v. *Locomobile Co.*, 258 U. S. 34, 36-39; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337, 342-3; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 404; *Illinois Cent. R. Co.* v. *Minnesota*, 309 U. S. 157, 165; *Atlas Life Ins. Co.* v. *Southern*, 306 U. S. 563, 570-1.

The obligation to pursue the state remedies to contest taxes levied during his administration of the estate is just as binding upon a trustee as it would have been upon the debtor if no reorganization was pending, since, in a section 77 proceeding, the trustee stands in the shoes of the debtor respecting tax obligations and remedies for review.

This is the rule established in the *Boteler* case discussed above at the end of point 2, and, as there held, the District Court has no jurisdiction to supersede the state processes of tax review, and deny to petitioners "the traditional and almost universal method of enforcing prompt payment" of taxes.

4.

If the District Court possessed jurisdiction under section 64(a) to hear and determine the amount and legality of taxes, it should have withheld its exercise thereof until the Trustee had exhausted the administrative, and other, remedies provided by state law, and until the amount and legality of the taxes had been thus established according to the constitution and laws of the state.

The Trustee's petition in this case was filed before any taxes were in default, and before any attempt had been made for collection. There was no proof that the reorganization proceeding would be interfered with or delayed by pursuit of the reviewing processes prescribed by law, or that all of the Trustee's objections to the amount or legality of the taxes could not have been heard and determined, by due process of law, in the process of such review.

There appears to be no reason, or excuse, for not pursuing the state remedies, except the claim of exclusive jurisdiction in the District Court to hear and determine all questions as to the amount and legality of those taxes, which had not been otherwise disputed or contested.

The cases cited under point 3 also cover this point. Hence, only additional cases will be cited here.

In *Railroad Commission* v. *Pullman Co.*, 85 L. ed. Adv. Op. 580, a three-judge court possessed an undoubted federal jurisdiction, but this Court applied "a doctrine of abstention appropriate to our federal system whereby the federal court, 'exercising a wise discretion' restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary" *(p. 582)*, and reversed and remanded the case for reasons stated, and particularly the following: (p. 583).

> "In the absence of any showing that these obvious methods for securing a definitive ruling in the state courts cannot be pursued with full protection of the constitutional claim, the district court should exercise its wise discretion by staying its hands. Compare Thompson *v.* Magnolia Petroleum Co., 309 U. S. 478, 84 L. ed. 876, 60 S. Ct. 628, 42 Am. Bankr. Rep. (NS) 216."

> "We therefore remand the cause to the district court, with directions to retain the bill pending a determination of proceedings, to be brought with reasonable promptness, in the state court in conformity with this opinion. Compare Atlas L. Ins. Co. *v.* W. I. Southern, Inc., 306 U. S. 563, 573, 83 L. ed. 987, 994, 59 St. Ct. 657, and cases cited."

The case of *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478, above cited, involved the same respondent, and a section 77 proceedings of a subsidiary of the same Debtor, as in the present case. This court found that "Bankruptcy courts have summary jurisdiction to adjudicate con-

troversies relating to property over which they have actual or constructive possession." *(pp. 481-2)*,

> "But the proper exercise of that control may, where the interests of the estate and the parties will best be served, lead the bankruptcy court to consent to submission to State courts of particular controversies involving unsettled questions of State property law and arising in the course of bankruptcy administration. And, under the circumstances of this case, we conclude that it is desirable to have the litigation proceed in the State courts of Illinois." *(p. 483)*.

> "Unless the matter is referred to the State courts, upon subsequent decision by the Supreme Court of Illinois it may appear that rights in local property of parties to this proceeding have—by the accident of Federal jurisdiction—been determined contrary to the law of the State which in such matters is supreme." *(p. 484)*.

The case was accordingly remanded for appropriate submission to the Illinois state courts *(p. 484)*.

In re New York, O. & W. Ry. Co., 25 Fed. Supp. 709, District Judge Hulbert held that he had jurisdiction under section 64(a) to hear and determine a dispute as to the amount and legality of a tax claim of the City of New York, but that "the exercise of the authority thereby conferred is entirely in the sound discretion of the judge before whom said proceeding is pending". That, and the following, appears at page 713:

> "(6, 7) It is in the public interest that Federal Courts of Equity (and a Court of Bankruptcy is a Court of Equity, which has taken jurisdiction pur-

> suant to the provisions of Section 77 of proceedings heretofore conducted in the nature of an Equity Receivership) should exercise their discretionary power with proper regard for the rightful independence of State governments in carrying out their domestic policy. It has long been the accepted practice for the Federal Courts to relinquish their jurisdiction in favor of the State Courts, where its exercise would involve control of or interference with the internal affairs of a domestic corporation of the State. There are stronger reasons for adopting a like practice where the exercise of jurisdiction involved an unnecessary interference by injunction with the lawful action of State officials. Pennsylvania *v.* Williams, 294 U. S. 176, 185, 55 S. Ct. 380, 79 L. Ed. 841, 96 A. L. R. 1166.
>
> It is not alleged by the Debtor, as pointed out by Mr. Justice Stone in that case, at page 183, 55 S. Ct. at page 384; 'That the procedure thus provided is inadequate, or that it will not be diligently and honestly followed.' "

There is no reason, on the score of expedition, expense, or otherwise, why respondent could not have a prompt and effective adjudication of his objections to the taxes in question in the state courts, according to the laws and procedure, of Arkansas.

The object of section 77 proceedings is to sequester and preserve a transportation system pending the progress of what in the last analysis is a composition of creditors for relief from the burden of debts or excessive capital structure. The claim of its creditors and security holders arise from voluntary obligations which the court may modify in value or transform in character, according to equitable

principles of priority among securities of basic quality and among secured and unsecured creditors, subject only to the final approval of the creditors.

Taxes are not voluntary obligations. They arise by operation of law from the relationship between sovereign and subject, an essentially reciprocal relationship under which the sovereign grants the franchise of existence accompanied by certain attributes of sovereignty necessary to the construction, maintenance and operation of a common carrier property, and the subsequent protection of the courts, administrative departments, and innumerable state and municipal services, such as fire, police and many others, necessary to the functioning of the corporation, and the use of its property. Without these the trustee could not conduct the business of the debtor. The primary reciprocal obligation of the corporation (and the trustee) is to pay the taxes levied for the support of the government which gives the enterprise life and existence. Such taxes are, at common law, and by statute, imposed as liens upon the property against which they are assessed until they are paid and satisfied, together with statutory interest during delinquency.

The laws under which the taxes are levied, including those which prescribe measures of adjustment, review, and adjudication of disputes affecting their amount and legality, are within the exclusive province of the state. The method of valuation, the amount of taxes to be raised, the tax rate to be applied, the nature and extent of the lien, and the machinery for assessment and collection belong entirely to the legislative branch of the state government.

The State of New Jersey contends that section 64(a) confers no authority on the District Court in a reorganization proceedings to hear or determine the amount or validity of such taxes. If that contention is erroneous then the state submits that the only questions open for determination are (a) whether the exaction is a "tax", and (b) whether it was imposed in accordance with the law and practice authorized or approved by state law. Contention (b) is conceded by the court below in the present case, in *St. Francis Levee District* v. *Kurn*, 98 F. (2d) 394, *certiorari* denied, 305 U. S. 647. Decisions on both conclusions (a) and (b) are *In re 168 Adams Building Corp.*, 27 Fed. Supp. 247, affirmed 105 Fed. (2d) 704, *certiorari denied*, 308 U. S. 623; *Nashville, C. & St. L. Ry.* v. *Browning*, 310 U. S. 362; *Central R. R. Co.* v. *Martin*, 115 Fed. (2d) 968.

Up to and including the time when section 64(a) assumed its present form (1938), and thereafter until the decision of the *Nashville* case on May 20, 1940, it was assumed that the Federal courts had power, on the ground of excessiveness, to review and reduce the amount of state taxes, under the authority of *Great Northern Ry. Co.* v. *Weeks*, 297 U. S. 135, but that issue is no longer within federal jurisdiction, since the decision of the *Nashville* case. Unless there has been illegal discrimination or a denial of due process under the 14th Amendment, there is no power in the federal courts to hear and determine the issue of excessiveness (amount) of state assessments and taxes, and their legality is determinable solely in the state courts and in accordance with state laws.

The state courts are competent to determine those questions, and any errors on questions of federal law can be

corrected by review in this Court *(28 U. S. C. A. sec. 384)*, *Indiana Mfg. Co.* v. *Koehn*, 188 U. S. 681, 687, 690, 691; *Keokuk & Hamilton Br. Co.* v. *Salm*, 258 U. S. 122; *Grubb* v. *Public Utilities Com.*, 281 U. S. 470, 476; *Am. Surety Co.* v. *Baldwin*, 287 U. S. 156, 165, 167, 169; *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89, 95-6; *Worcester County Tr. Co.* v. *Riley*, 302 U. S. 292, 298; *Minnesota &c.* v. *Probate Court*, 309 U. S. 270, 277.

Conclusion.

The State of New Jersey respectfully submits—

(a) That the judgment of the court below should be reversed for the reasons above set forth under points 1, 2, and 3;

(b) That if the court concludes otherwise, the judgment of the court below should be reversed and the case remanded with instructions that the trustee pursue the remedies provided by the laws of the State of Arkansas for hearing and determining the amount and legality of the taxes involved, for the reasons above set forth in point 4.

Respectfully,

DAVID T. WILENTZ,
Attorney General,
Attorney for the State of New Jersey.

DUANE E. MINARD,
Counsel.
1180 Raymond Boulevard,
Newark, New Jersey.

April 3, 1941.

Appendix "A".

List of New Jersey Tax Claims.

Railroad Company	Petition Filed	Tax Claim Filed	Amount	Tax Years	USDC
*New York, S. & W.....	6/ 1/37	9/28/37	$872,393.75	1933–7	New Jersey
*Erie	1/18/38	9/17/38	689,081.45	1933–8	No. D. Ohio, E. Di
*New Jersey & N. Y....	6/30/38	12/27/38	247,519.65	"	"
*Central of N. J.....10/30/39		12/11/40	12,117,450.68	1932–9	New Jersey
†Ogden Mine		"	3,220.69	"	"
†New York & L. B.....		"	318,305.30	"	"
†Dover & Rockaway....		"	13,636.27	"	"
†Bay Shore Cont'g.....		"	5,528.40	"	"
Total Unpaid Taxes.....			$14,226,936.19		
(Exclusive of interest)					

* Debtor companies who filed petitions.

† Lessor wholly-owned subsidiaries whose leases have not been disaffirmed and whos property is operated by Trustees of Debtor-lessees for benefit of Debtor's estate.

Appendix "B".

(April 5, 1939.)

Memorandum

The Court feels it necessary to undertake a consideration of the tax claim by the State of New Jersey against the New York, Susquehanna and Western Railroad now under reorganization before us. We feel that we cannot otherwise perform that plain duty to the bondholders which the statute imposes upon us. Congress has jurisdiction over Bankruptcy and it has imposed upon this Court the present duty of a reorganization.

We understand that the State does not question our jurisdiction *qua* jurisdiction, but does maintain that we are bound by the decision of our own Circuit, *New York, Susquehanna & Western R. R. Co.* v. *Martin*, 100 F. (2d) 139, cert. den. March 13, 1939. We may find this to be the ultimate conclusion. We do not believe however, that we can reach it without hearings and an examination of the facts underlying the method of assessment of railroad property in New Jersey. We have no doubt that those facts were ably and fully presented in the case above referred to. It is clear that different judicial minds have different judicial methods of approach. It may well be, therefore, that our inquiry will lead us to call for additional testimony or for testimony presented from a different point of view.

The general problem seems to be that discussed by that very great authority, Professor Seligman, of Columbia University in his Essays on Taxation. In the Chapter on the General Property Tax, he sets forth what he deems to be the five principal disadvantages of that tax as follows: lack of uniformity or inequality of assessment; lack of

universality or failure to include personal property; incentive to dishonesty; regressivity or the rate increasing as the property or income decreases; and double taxation: and concludes in the following trenchant sentence:

> "If we sum up all these inherent defects, it will be no exaggeration to say that the general property tax in the United States is a dismal failure". (P. 31.)

We may say that we are reminded of Walpole's famous observation:

> "landed gentlemen are like the flocks upon their plains, who suffer themselves to be shorn without resistance; whereas the trading part of the nation resemble the boar, who will not suffer a bristle to be pluckt from his back without making the whole parish to echo with his complaints". (Sinclair, History of the Public Revenue, Vol. iii, appendix p. 79.)

How far the problem is for the Legislature and how far for the Courts is an important part of any decision we may be constrained to reach. For that reason, any comment thereon at this time is inappropriate.

Counsel will present an order fixing a time for hearings. Such time will be after the conclusion of our last sitting in the Circuit Court of Appeals, June 23rd. Otherwise, counsel will consult their and not the Court convenience. In the meantime, the trustee will withhold payment of any taxes now claimed.

Appendix "C".

(December 12, 1940.)

Order No. 172.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

IN THE MATTER *of* NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY, Debtor,	Proceedings for Reorganization. No. 26175.

Order on Trustee's Petition for Instructions Relative to New Jersey Tax Litigation.

Upon filing of the petition of Walter Kidde, Trustee herein, praying for instructions relative to litigation of taxes assessed by the State of New Jersey against Debtor's property in said state, and it appearing to the court that the question of the amount and legality of the taxes assessed by the State of New Jersey against Debtor's property for the years 1933 to 1937, both inclusive, is pending and undetermined before this court in the above entitled reorganization proceedings upon a claim filed therefor herein by the State of New Jersey, to which said Trustee has filed objections herein, and it further appearing to the court that this court has jurisdiction to hear and determine the questions so raised, ORDERED:

That Walter Kidde, Trustee herein, be and he hereby is authorized and directed to not join in the proposed peti-

tion to the United States Circuit Court of Appeals, Third Circuit, for a rehearing of the consolidated causes referred to in his said petition or in any other proceedings connected with the said appeals.

Dated: December 12, 1940.

WILLIAM CLARK,
U. S. D. J.

Appendix "D".

(January 7, 1941.)

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

IN THE MATTER *of* THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 29778.

Order No. 77 Instructing the Trustees Concerning the Tax Litigation Now Pending in the United States Circuit Court of Appeals for the Third Circuit, Involving the New Jersey State Taxes for the Years 1934, 1935 and 1936.

Upon reading and filing the duly verified petition of Shelton Pitney and Walter P. Gardner, Trustees of the Debtor, for the direction, instructions and protection of this Court as to whether they, as Trustees of the Debtor, should join or cause the Debtor to join, in a proposed peti-

tion to the United States Circuit Court of Appeals for the Third Circuit for a rehearing of the decision of that Court rendered on or about November 27, 1940; and the matter having been heard in the presence of the Trustees and of counsel for Central Hanover Bank and Trust Company, as Trustee under the Debtor's General Mortgage, the Committee representing the Institutional Group of Bondholders, the Brooks Committee, the Watters Committee, Reading Company and the Debtor; and it appearing from said petition that a petition was filed with said Circuit Court of Appeals on or before December 6, 1940, for an enlargement of the time within which a petition for rehearing might be filed with said Court and that said Court thereupon made an order that the prayer of the petition for enlargement was presented, insofar as the Trustees of the Debtor or the Debtor itself were and are concerned, without authority, and said petition having been filed without any authority from or knowledge upon the part of this Court; and this Court, upon consideration, being unwilling to authorize the filing of a petition for rehearing by the Trustees of the Debtor or by the Debtor itself or otherwise at this time to authorize any action which might be deemed to waive, surrender or curtail the jurisdiction of this Court, sitting as a court of bankruptcy; and good cause appearing herefor,

It is, on this 7th day of January, 1941 ORDERED that the Trustees of the Debtor be and they are hereby instructed and directed not to file or cause the Debtor to file with the United States Circuit Court of Appeals for the Third Circuit a petition for rehearing by that Court of its opinion rendered on or about November 27, 1940 wherein and whereby said Court ruled that the injunctive decrees of the District Court of the United States for the District of New Jersey entered on or about January 25, 1940 should be reversed; and that the Trustees and the Debtor refrain from participating in any such petition or in any argument thereon;

And it is further ORDERED that this Court does hereby expressly reserve for future consideration any and all other questions arising or which may arise in connection with the rights and duties of the Trustees and of the Debtor in respect of the taxes assessed against the Debtor's property for the years 1934, 1935 and 1936;

And it is ADJUDGED that the petition for enlargement of time for the filing with the United States Circuit Court of Appeals for the Third Circuit of a petition for rehearing on the conclusions announced by that Court on or about November 27, 1940, was filed without the knowledge or authority of this Court and without other sufficient or legal authority, and that said petition and the order entered thereon were wholly without force or effect insofar as this Court or the parties to this cause or the property of the Debtor are concerned.

GUY L. FAKE,
U. S. D. J.

Appendix "E".

(January 8, 1941.)

IN THE

UNITED STATES DISTRICT COURT,

FOR THE DISTRICT OF NEW JERSEY.

IN THE MATTER *of* THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 29778.

Order No. 78, Instructing the Trustees Not to File Complaint Pursuant to Revised Statutes of New Jersey, Section 54:26-3, Touching 1941 State Taxes.

Upon reading and filing the duly verified petition of Shelton Pitney and Walter P. Gardner, Trustees of the Debtor, for the direction, instructions and protection of this Court as to whether a complaint should be filed with the State Tax Commissioner against the valuation of $67,624,953 tentatively fixed by the State Tax Commissioner as the assessed valuation of the Debtor's property as of January 1, 1940 in respect of the Debtor's state taxes for the year 1941; and good cause appearing herefor:

It is, on this 8th day of January, 1941, ORDERED that the Trustees of the Debtor be and they are hereby instructed and directed not to file with the State Tax Commissioner of the State of New Jersey a complaint against the valuation of $67,624,953 tentatively fixed by the State Tax Commissioner as the assessed valuation of the Debtor's prop-

erty as of January 1, 1940 in respect of the Debtor's state taxes for the year 1941.

And it is further ORDERED that this Court does hereby expressly reserve for future consideration any and all other questions arising or which may arise in connection with the rights and duties of the Trustees and of the Debtor in respect of the taxes which may be assessed against the Debtor's property for the year 1941.

GUY L. FAKE,
U. S. D. J.

Appendix "F".

(January 31, 1941.)

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

IN THE MATTER *of* THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Debtor.	In Proceedings for the Reorganization of a Railroad, No. 29778.

Memorandum on Trustees' Petition as to Prosecution of 1939 Appeals Before New Jersey State Board of Tax Appeals.

FAKE, *District Judge:*

It appears from the petition for instructions filed herein on the 29th instant that the opinion of the Court is sought as to the proper course to be pursued by the debtor in respect of the further prosecution of the debtor's appeal from

the New Jersey state tax assessment against the debtor for the year 1939.

It appears that, by virtue of proceedings before the State Tax Commissioner, the debtor's property has been assessed for tax purposes at the value of $72,624,572. resulting in the imposition of a tax of $3,415,922.05 for the year 1939, from which the debtor has appealed to the State Board of Tax Appeals. Numerous hearings have been held before that board and the proceedings have now reached a stage at which the debtor is entitled to introduce rebuttal testimony on Monday next. A doubt exists as to whether it should proceed further with said tax appeal in view of the fact that the State of New Jersey has filed its claim for the said taxes with the trustees in the reorganization proceeding, where it may be found that this Court has and should exercise exclusive jurisdiction under Section 64 (a) and other provisions of the Bankruptcy Act.

The question thus raised presents intricacies and can not be answered before Monday next since it requires a careful study of the statutory and case law on the subject and a submission of briefs to the Court. Pending such study and the filing of briefs, it is the view of the Court that the debtor should appear before the State Board of Tax Appeals and there make known the intricacies with which this Court at short notice is confronted as to the law on the subject, and respectfully request an adjournment for two weeks within which time the question presented may be studied and answered.

Filed: Jan. 31, 1941.

Appendix "G".

(February 13, 1941.)

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

IN THE MATTER *of* THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 29778.

Order No. 84 Instructing Trustees as to Further Prosecution by the Debtor of Its 1939 Tax Appeal Now Pending Before the New Jersey State Board of Tax Appeals.

The Trustees of the Debtor having on January 29, 1941 filed in this cause their petition for the instructions of this Court as to the proper course to be pursued in respect of the further prosecution of the Debtor's appeal from the the New Jersey State tax assessment against the Debtor for the year 1939, now pending before the New Jersey State Board of Tax Appeals; and this Court having taken the matter under advisement and being of the opinion that the Debtor may continue to prosecute said appeal to a final determination by said State Board of Tax Appeals, without in anywise limiting or affecting the jurisdiction or powers of this Court under the bankruptcy laws of the United States in such case made and provided,

It is, as of this 13th day of February, 1941, on motion of the Trustees, ORDERED that the Trustees of the Debtor

be and they are hereby instructed that the Debtor may continue to prosecute its 1939 tax appeal to a final determination by the New Jersey State Board of Tax Appeals.

And it is further ORDERED that if any question arises as to the amount or legality of any tax assessed against the Debtor, or as to any tax claim heretofore or hereafter filed against the Debtor's estate or against the Trustees of the property of the Debtor, such question shall be heard and determined by this Court.

GUY L. FAKE,
U. S. D. J.

Filed: February 13, 1941.

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SUPREME COURT OF THE UNITED STATES.

No. 715.—October Term, 1940.

The Arkansas Corporation Commission and Fifty-one County Tax Collectors of Arkansas, Petitioners,
vs.
Guy A. Thompson, as Trustee of Missouri Pacific Railroad Company, Debtor.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[April 28, 1941.]

Mr. Justice Black delivered the opinion of the Court.

This case raises questions concerning the right and power of a federal bankruptcy court to revise and redetermine for state tax purposes the property value of a railroad (Missouri Pacific) in reorganization under section 77 of the Bankruptcy Act, the state (Arkansas) having already determined such value through its own taxing officials and in accordance with the procedure prescribed by valid state legislation.

Over the objections of Arkansas officials, the District Court sitting in bankruptcy held that it did have such power. 33 F. Supp. 728. The Circuit Court of Appeals affirmed. 116 F. (2d) 179. In so holding, both courts relied on section 64(a) of the general bankruptcy act, 11 U. S. C. § 104(a) (Supp. 1939), as the source of this power. That section, so far as pertinent here, provides "The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates . . . . shall be . . . . (4) taxes legally due and owing by the bankrupt to the United States or any State . . . : Provided, . . . That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the [bankruptcy] court . . . ."

Petitioners contend that section 64(a) is in its entirety inconsistent[1] with the aims and purposes of section 77, 11 U. S. C. § 205

[1] Section 77(l) provides: "In proceedings under this section *and consistent with the provisions thereof*, the jurisdiction and powers of the court, . . . and the rights and liabilities of creditors, . . . shall be the same as if a

(Supp. 1939), and that it therefore has no application here. That question we need not decide. For we are of opinion that the Congressional language giving to the bankruptcy court power to determine the "amount or legality" of taxes does not mean that the court is given power to redetermine and revise the property value finally fixed by a state under the circumstances revealed by the trustee's petition, even though that value is the basis used in computing the amount of taxes "legally due and owing."

An explanation of the power, functions, and action of the Arkansas Corporation Commission is essential to a clear understanding of this case. That Commission is a state agency created pursuant to state constitutional requirements.[2] It is vested with broad authority in the regulation of railroads, canals, turnpikes, public utilities, motor vehicles, sleeping cars, telephone and telegraph companies, and companies transmitting and distributing gas, oil and electricity.[3] Also, in the administration of the state tax laws the Corporation Commission has general and complete supervision and control over the valuation, assessment and equalization of all property. Before entering upon his duties in the assessment of property, each member of the Commisison must subscribe to an oath that he will well and truly value and assess all property required to be assessed.[4] The Commission has full power to summon witnesses and hear evidence, but further, before assessments are finally determined, all persons interested have the right, on written application, to appear and be heard.

The Missouri Pacific has been in reorganization under section 77, with respondent as trustee, since 1933. In 1939, as in the preceding years, the railroad's properties were being operated by the

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voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed." (Italics supplied.)

Among the federal court decisions cited in briefs supporting the petition as bearing on the issue of inconsistency between sections 64(a) and 77, either directly or indirectly, are the following: Lowden v. Northwestern National Bank & Trust Co., 298 U. S. 160, 164; In re Chicago, M., St. P. & P. R. R., 27 F. Supp. 685; City of Springfield v. Hotel Charles Co., 84 F. (2d) 589; In re A. V. Manning's Sons, 16 F. Supp. 932; In re New York, O. & W. Ry., 25 F. Supp. 709; Texas Co. v. Blue Way Lines, 93 F. (2d) 593; Henderson County v. Wilkins, 43 F. (2d) 670. And see Finletter, The Law of Bankruptcy Reorganization (1939) pp. 343-344.

[2] Ark. Dig. Stats. (Pope, 1937) § 1930.

[3] *Id.*, §§ 1930-2128.

[4] *Id.*, § 2042.

trustee. The Commission, after a hearing in which the trustee participated, fixed the value of the railroad's Arkansas property, and levied an assessment for 1939. The trustee's motion for rehearing was heard, considered, and overruled by the Commission. The trustee concedes here that the hearing granted by the Commission was in "full compliance with all the administrative steps required by the Arkansas statute." Under controlling Arkansas law, it is provided that "Within thirty days after the entry on the record of the said Arkansas Corporation Commission of any order made by it, any party aggrieved may file a written motion with any member of such commission or with the secretary thereof praying for appeal from such order to the circuit court of Pulaski County; and thereupon said appeal shall be automatically deemed as granted as a matter of right without any further order."[5] Any party aggrieved by the Circuit Court's decision may then obtain as a matter of right an appeal to the Supreme Court of the state.[6] It is provided by statute that preferential standing on the docket be given to appeals from the Commission to the Circuit Court, and from the Circuit Court to the Supreme Court.

The Commission's final order fixing the value of the railroad's property for tax assessment was entered on December 4, 1939. The trustee did not appeal to the Circuit Court of Pulaski County within thirty days as authorized by Arkansas law, and the assessment of the Corporation Commission thereupon became final. Thus tested by Arkansas taxation legislation, the assessed taxes were, in the language of section 64(a), "legally due and owing" to the state in the "amount" fixed by the Commission, and were not subject to further judicial review, unless the special circumstance that a taxpayer is in bankruptcy or reorganization places it in a separate tax classification different from that of all other Arkansas taxpayers.

But three months after the expiration of the time allowed by the state for the trustee to appeal from the Commission's order—specifically, on April 11, 1940—the trustee petitioned the bankruptcy court, sitting in Missouri, to determine the "amount or legality" of the Arkansas tax by revising the property value found by the Corporation Commission and upon which the amount was based. The

[5] *Id.*, § 2019.
[6] *Id.*, § 2020.

basis of the trustee's petition was that the Commission had made an overassessment, in that after a hearing it had determined the property to be worth far more than its actual value. This argument rested upon a contention that the Commission had overvalued the property by giving "predominant weight . . . to original cost and to cost of reproduction, and wholly inadequate consideration . . . to the market value of the railroad's stocks and bonds and to an enormous reduction in earnings occasioned by general business considerations and to rapid increase of competition from buses, trucks, water and air." The bankruptcy court was asked to find the Commission's tax assessment illegal upon three grounds: (1) The value determined by the Board was greatly in excess of the fair market value of the railroad's property and therefore there was a violation of that section of Arkansas law which provides that the assessment shall be "upon the consideration of what a clear fee simple title thereto would sell for under conditions under which that character of property is usually sold."[7] (2) The assessment was in violation of Section 5 of Article 16 of the Constitution of Arkansas which provides that all property shall be taxed according to its value and that no one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value, and that all values shall be ascertained so as to make the same equal and uniform throughout the state. (3) The alleged excessive valuation fixed by the Commission was in violation of the Fourteenth Amendment of the Constitution of the United States.

It is thus obvious that the trustee's petition, which the bankruptcy court refused to dismiss, rested entirely upon the assumption that section 64(a)(4) gave the bankruptcy court power to hold a completely new hearing in order to set its own value on the property, regardless of the value fixed by the state through its expert and specially constituted quasi-judicial agency.[8]

But we do not so interpret section 64(a)(4). What section 64(a)(4) relates to is "taxes legally due and owing by the bank-

[7] *Id.*, § 2044.

[8] Among the lower federal court decisions discussing the power of bankruptcy courts under section 64(a)(4) are: In re Gould Mfg. Co., 11 F. Supp. 644; In re 168 Adams Building Corp., 27 F. Supp. 247, affirmed, 105 F. (2d) 704; In re Schach, 17 F. Supp. 437, 439; In re Lang Body Co., 92 F. (2d) 338; Henderson County v. Wilkins, 43 F. (2d) 670.

rupt." And what that section further provides is that "in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court; . . . ." Nothing in this language indicates that taxpayers in bankruptcy or reorganition are intended to have the extraordinary privilege of two separate trials, one state and one federal, on an identical issue of controverted fact—the value of the property taxed. Manifestly, whether or not taxes are "legally due and owing" to a state depends upon the valid laws of that state. Ad valorem taxes depend upon a determination of value. The governmental function of fixing the value for tax purposes has rarely, if ever, been a judicial function. The "legality" of the action of Arkansas in entrusting the determination of value to its Corporation Commission is not challenged here, as of course it could not be. If the Commission properly found the value of the property, the "amount" of the taxes is not in question. For it is not asserted that the Commission made an improper arithmetical computation in applying the legal tax rate to the determined property value. It is in this respect, as well as with regard to the dissimilar duties and functions of the state administrative agencies involved, that this case differs from that of *New Jersey* v. *Anderson*, 203 U. S. 483, upon which the trustee here strongly relies. In that case, as here, the relevant provision of section 64(a) was relied on as authorizing the bankruptcy court to determine the "amount or legality" of taxes. New Jersey had imposed a franchise tax upon the outstanding—not the authorized—capital stock of corporations, varying in proportion to the number of shares. A state agency, without a hearing, imposed a tax on the $40,000,000 authorized stock of the company involved, when in fact the company had only $10,000,000 of such stock outstanding. This Court said: "It may well be doubted whether the board had power to tax any other stock [except that outstanding]. But be that as it may, section 64(a) specifically provides that in case any question arises as to the amount or legality of taxes, the same shall be heard and determined by the court, with a view to ascertaining the amount really due. We do not think it was the intention of Congress to conclude the bankruptcy courts by the findings of boards of this character, and that the claim should have been upon

the basis of the capital stock actually outstanding." But in that case the trustee argued in his brief before this Court that under controlling New Jersey law "the assessors acted ministerially, not judicially", their "determination was merely computation", and their actions exceeded their statutory authority.[9]

The Arkansas Corporation Commission, however, does not act ministerially. On the contrary, it is a quasi-judicial agency entrusted with wide responsibilities in connection with the general tax system of the state. Upon it the state relies for the hearing and determination of matters essential to the maintenance and fair functioning of a uniform tax system. For reasons deemed suitable to it, the state has elected to confide this duty to the same agency which has power to exercise statewide regulatory supervision over public utilities, including railroads. The difficulties in fixing railroad valuations are well known, and have been many times adverted to by this Court.[10] The Corporation Commission has been chosen by Arkansas as the ultimate guardian of the rights of the state and its taxpayers, subject only to that judicial review provided for by the state. "The State has confided those rights to its protection and has trusted to its honor and capacity as it confides the protection of other social relations to the courts of law." *Chicago, B. and Q. Ry.* v. *Babcock*, 204 U. S. 585, 598.

If the trustee had availed himself of his right of appeal to the courts of Arkansas, with an ultimate right of appeal to this Court for final determination of federal questions, it is difficult to believe that it would now be seriously argued that Congress, by section 64(a)(4), intended to impose upon the bankruptcy court the unusual power and delicate duty of trying out afresh the facts found by the state with relation to the value of property. And there is no more reason to assume that Congress intended that the bankruptcy court should fail to give respect to an unappealed determination of value made by the Arkansas Corporation Commission. Bankruptcy and reorganization proceedings today cover a wide area in the business field. But there is nothing in the history of

[9] In advancing this argument counsel called attention to the case of People's Investment Co. v. State Board of Assessors, 66 N. J. L. 175, in which the Court had said that it was beyond the jurisdiction of the tax agent to levy a tax on any but the outstanding capital stock. Counsel also relied on Arimex Copper Co. v. State Board of Assessors, 69 N. J. L. 121.

[10] E. g., Nashville, C. and St. L. Ry. v. Browning, 310 U. S. 362, 370; Rowley v. Chicago & N. W. Ry., 293 U. S. 102, 109, and cases cited.

bankruptcy or reorganization legislation to support the theory that Congress intended to set the federal courts up as super-assessment tribunals over state taxing agencies. The express legislative purpose of Arkansas to move towards a more nearly uniform and fairly distributed tax burden through relying on supervision by a single agency could be in large part frustrated by the construction of the Bankruptcy Act for which the trustee here contends. Section 64(a), thus construed, would tend to obstruct, and not to facilitate, the enforcement of state tax laws.[11] Nothing in the language of the Act requires such a construction. And the policy of revising and redetermining state tax valuations contended for by the trustee would be a complete reversal of our historic national policy of federal non-interference with the taxing power of states.

For the reasons given, it is our opinion that the District Court should have dismissed the trustee's petition.

Reversed.

Mr. Justice DOUGLAS took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[11] Boteler v. Ingels, 308 U. S. 57, 61; Healy v. Ratta, 292 U. S. 263, 270; Pennsylvania v. Williams, 294 U. S. 176, 185. Cf. Bankruptcy Act of 1867, § 28(5), 14 Stat. 531; Act of June 18, 1934, 28 U. S. C. § 124(a), 48 Stat. 993.